

AMENDED IN SENATE MAY 9, 2006
AMENDED IN SENATE APRIL 18, 2006
AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1452

Introduced by Senator Speier

February 23, 2006

An act to amend Sections 1236, ~~1237~~, and ~~8546.5~~ and ~~1237~~ of, to add Section 8546.2 to, to add Article 4 (commencing with Section 8548.7) to Chapter 6.5 of Division 1 of Title 2 of, and to add Part 3.5 (commencing with Section 13885) to Division 3 of Title 2 of, the Government Code, and to amend Sections ~~11751.5~~ ~~11752.5~~ and 11873 of the Insurance Code, relating to state audits.

LEGISLATIVE COUNSEL'S DIGEST

SB 1452, as amended, Speier. State audits.

(1) Existing law requires that the Controller, the Director of Finance, and the respective staffs of all state agencies that have their own internal auditors or that conduct internal audits or internal audit activities, and all city, county, city and county, and district employees that conduct internal audits or internal audit activities of those respective agencies, utilize the general and specified standards of internal auditing specified in a publication of the Institute of Internal Audits.

This bill instead would require these entities to conduct their work under the general and specified standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States, as appropriate, and except as specified.

(2) Existing law sets forth the duties and authority of the State Auditor generally in conducting audit activities on behalf of the state.

This bill would require the State Auditor to request that any state or local agency, or any publicly created entity, that is the subject of an audit conducted under these provisions to provide updates on its progress in implementing the recommendations made by the State Auditor, at intervals prescribed by the State Auditor. It would require state agencies to provide these updates to the State Auditor.

This bill would enact the Omnibus Audit Accountability Act of 2006, to require the State Auditor to, by January 15th of each year, report to specified entities with respect to each state agency audit recommendation it has made that is more than one year old and that has not been implemented by the affected agency. It would require any state agency that is notified by the State Auditor that it has not implemented a recommendation made pursuant to this chapter more than one year prior, to provide specified information in that regard.

~~(3) Existing law authorizes the State Auditor to establish a high-risk government agency audit program for the purpose of identifying, auditing, and issuing reports on any agency of the state, that the State Auditor identifies as being at high risk for the potential of waste, fraud, abuse, and mismanagement or that has major challenges associated with its economy, efficiency, or effectiveness, subject to specified criteria.~~

~~This bill instead would require the State Auditor to establish this program.~~

~~(4)~~

(3) Existing law requires all state and local agencies with an aggregate spending of \$50,000,000 or more annually to consider establishing an ongoing internal audit function.

This bill instead would apply this provision to local agencies only.

The bill would require all state agencies with an aggregate spending of \$100,000,000 or more annually, as specified, to establish an ongoing internal audit function, subject to specified criteria, or enter into an interagency agreement with the Department of Finance that provides for an audit function. It would require any governing body that oversees a state agency with that aggregate spending amount to establish an audit committee, subject to specified criteria. It would set forth the requirements for reporting audit findings and recommendations by chief internal auditors, and specifically provide that an individual reporting certain information under these provisions

is protected under provisions of law protecting state employees from retaliation for reporting waste, fraud, or abuse. It would further require the State Auditor to annually select not less than 2 state agencies and conduct a performance audit of the internal audit organizations within the selected state agencies to determine whether the audit organizations are meeting the requirements of these provisions.

(5) Existing law requires ~~the Insurance Commissioner to designate a licensed rating organization as his or her statistical agent to gather and compile insurer experience statistics for specified purposes to provide any policy information contained in its records to specified government entities.~~

This bill would specify that ~~the designated statistical agent is a publicly created entity for purposes of audits by the State Auditor Bureau of State Audits, in conducting specified audits, shall have access and authority to examine records held by a licensed rating organization to the same extent that any officer or employee of a state agency has access and authority to examine those records, subject to specified requirements.~~

(6) Existing law exempts the State Compensation Insurance Fund from certain provisions of law applying to state agencies, with specified exceptions.

This bill would specify that the fund is subject to the provisions of law governing audits by the State Auditor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1236 of the Government Code is
- 2 amended to read:
- 3 1236. (a) All city, county, city and county, and district
- 4 employees that conduct internal audits or that conduct internal
- 5 audit activities of those respective agencies shall conduct their
- 6 work under the general and specified standards prescribed by the
- 7 Institute of Internal Auditors or the Government Auditing
- 8 Standards issued by the Comptroller General of the United
- 9 States, as appropriate.
- 10 (b) Nothing in this section is intended to limit the rights or
- 11 obligations of internal auditors to conduct internal audits and

1 audit activities in accordance with other laws and regulations that
2 may apply to a particular entity, *as appropriate*.

3 SEC. 2. Section 1237 of the Government Code is amended to
4 read:

5 1237. All local agencies with an aggregate spending of fifty
6 million dollars (\$50,000,000) or more annually shall consider
7 establishing an ongoing internal audit function.

8 SEC. 3. Section 8546.2 is added to the Government Code, to
9 read:

10 8546.2. (a) The State Auditor shall request that any state
11 agency, as defined in Section 11000, whether created by the
12 California Constitution or otherwise, any local governmental
13 agency, including any city, county, city and county, school, or
14 special district, or any publicly created entity, that is the subject
15 of an audit conducted pursuant to this chapter provide updates on
16 its progress in implementing the recommendations made by the
17 State Auditor, at intervals prescribed by the State Auditor.

18 (b) Any state agency described in subdivision (a) shall provide
19 the State Auditor, in the form prescribed by the State Auditor,
20 with updates on implementation of recommendations as
21 described in subdivision (a).

22 ~~SEC. 4. Section 8546.5 of the Government Code is amended~~
23 ~~to read:~~

24 ~~8546.5. (a) The State Auditor shall establish a high-risk~~
25 ~~government agency audit program for the purpose of identifying,~~
26 ~~auditing, and issuing reports on any agency of the state, whether~~
27 ~~created by the California Constitution or otherwise, that the State~~
28 ~~Auditor identifies as being at high risk for the potential of waste,~~
29 ~~fraud, abuse, and mismanagement or that has major challenges~~
30 ~~associated with its economy, efficiency, or effectiveness.~~

31 ~~(b) In addition to identifying an agency as high risk on the~~
32 ~~basis of weaknesses identified in audit and investigative reports~~
33 ~~produced by the bureau, the State Auditor may consult with the~~
34 ~~Legislative Analyst, the Milton Marks "Little Hoover"~~
35 ~~Commission on California State Government Organization and~~
36 ~~Economy, the Office of Inspector General within the Department~~
37 ~~of Corrections, the Department of Finance, and other state~~
38 ~~agencies that have oversight responsibilities over any other~~
39 ~~agency of the state, in identifying state agencies that are at high~~
40 ~~risk.~~

1 ~~(e) The State Auditor shall notify the Joint Legislative Audit~~
2 ~~Committee whenever it identifies a state agency as at high risk.~~

3 ~~(d) The State Auditor may issue audit reports with~~
4 ~~recommendations for improvement in state agencies identified as~~
5 ~~at high risk not less than once every two years.~~

6 ~~(e) The State Auditor may require state agencies identified as~~
7 ~~high risk to periodically report to the auditor regarding the status~~
8 ~~of recommendations for improvement made by the State Auditor~~
9 ~~or other state oversight agencies.~~

10 ~~SEC. 5.~~

11 *SEC. 4.* Article 4 (commencing with Section 8548.7) is added
12 to Chapter 6.5 of Division 1 of Title 2 of the Government Code,
13 to read:

14
15 Article 4. Omnibus Audit Accountability Act of 2006

16
17 8548.7. This article shall be known and may be cited as the
18 Omnibus Audit Accountability Act of 2006.

19 8548.9. (a) The State Auditor shall, by January 15th of each
20 year, report to the Joint Legislative Budget Committee, the Joint
21 Legislative Audit Committee, and the Department of Finance
22 with respect to each state agency audit recommendation it has
23 made that is more than one year old and that has not been
24 implemented by the affected agency.

25 (b) The report shall clearly identify the state agency audited,
26 the audit that contained the recommendation, a brief description
27 of the recommendation, the date it was issued, and the most
28 recent explanation provided by the agency to the State Auditor
29 on the status of the recommendation.

30 (c) Any state agency that is notified by the State Auditor that it
31 has not implemented a recommendation made pursuant to this
32 chapter more than one year prior, shall do either of the following:

33 (1) Provide a written report to the State Auditor, the respective
34 policy committees and budget subcommittees of the Assembly
35 and Senate with oversight of the agency, and the Department of
36 Finance, explaining why the audit recommendation has not been
37 implemented.

38 (2) Notify all entities described in subdivision (a) that it will
39 begin implementing the audit recommendation within 90 days of

1 the notification by the State Auditor, and include the estimated
 2 date of implementation.

3 ~~SEC. 6.~~

4 SEC. 5. Part 3.5 (commencing with Section 13885) is added
 5 to Division 3 of Title 2 of the Government Code, to read:

6

7

PART 3.5. INTERNAL AUDITS

8

9 13885. The Legislature finds and declares as follows:

10 (a) Recent corporate scandals and federal legislation, such as
 11 the Sarbanes-Oxley Act of 2002 (P.L. ~~No.~~ 107-204), focus
 12 attention on the importance of internal audit activity to public
 13 accountability and governance.

14 (b) Ensuring the independence of internal auditors of state
 15 agencies and that their findings are reported to the appropriate
 16 levels of government is critical to safeguarding public funds and
 17 the public trust.

18 13886. (a) (1) All state agencies with an aggregate spending
 19 of one hundred million dollars (\$100,000,000) or more annually
 20 shall either establish an ongoing internal audit function or enter
 21 into an interagency agreement with the Department of Finance
 22 that provides for an audit function. The funding threshold for
 23 compliance with this subdivision shall not include any moneys
 24 subject to a single audit requirement pursuant to federal
 25 regulations.

26 (2) For purposes of this chapter, “state agency” has the same
 27 meaning as set forth in Section 11000, whether created by the
 28 California Constitution or otherwise.

29 (b) (1) Any governing body that oversees a state agency with
 30 the aggregate spending described in subdivision (a) shall
 31 establish an audit committee that generally meets the frameworks
 32 recommended by the American Institute of Certified Public
 33 Accountants, as set forth in the publication entitled “AICPA
 34 Audit Committee Toolkit: Government Organizations.”

35 (2) *For purposes of this chapter, “governing body” means a*
 36 *board, commission, board of trustees, council, or other similar*
 37 *body that oversees a state agency.*

38 13886.5. (a) The Controller, the Director of Finance, and the
 39 respective staffs thereof, and all state agencies that have their
 40 own internal auditors or that conduct internal audits or internal

1 audit activities, shall conduct internal audit activity under the
2 general and specified standards of internal auditing prescribed by
3 the Institute of Internal Auditors or the Government Auditing
4 Standards issued by the Comptroller General of the United
5 States, as appropriate.

6 (b) Nothing in this article is intended to limit the rights or
7 obligations of internal auditors to conduct internal audits and
8 audit activities in accordance with other laws and regulations that
9 may apply to a particular entity.

10 13887. (a) In order to achieve independence and objectivity
11 pursuant to Section 13886, for any state agency that does not
12 report to a governing body, the internal auditor operations shall
13 meet all of the following requirements:

14 (1) The chief internal auditor shall be accountable to the head
15 or deputy head of the state agency.

16 (2) The chief internal auditor shall report audit findings and
17 recommendations made under his or her jurisdiction to the head
18 or deputy head of the state agency and to the general counsel to
19 the state agency, if applicable.

20 (3) The operations shall be organizationally outside the staff or
21 line management function of the unit under audit.

22 (b) In order to achieve independence and objectivity as
23 required by the standards identified in Section 13886, for any
24 state agency that is overseen by a governing body, the internal
25 audit operations shall meet all of the following requirements:

26 (1) The chief internal auditor shall be accountable to the audit
27 committee of the governing body.

28 (2) The chief internal auditor shall report audit findings and
29 recommendations made under his or her jurisdiction to the audit
30 committee and the general counsel to the governing body.

31 (3) The operations shall be organizationally outside the staff or
32 line management function of the unit under audit.

33 13887.5. (a) When the chief internal auditor of a state agency
34 believes that senior management in the state agency has accepted
35 a level of residual risk that may be unacceptable to the
36 organization or that senior management has otherwise not taken
37 appropriate action in response to a finding or recommendation by
38 its internal auditors, the chief internal auditor shall discuss the
39 matter with senior management and the general counsel to the
40 state agency. If that decision regarding residual risk or the need

1 for appropriate action in response to an audit finding or
2 recommendation, or both, does not resolve the issue, the chief
3 internal auditor and general counsel shall jointly report the matter
4 to the next highest level of management as pertains to the state
5 agency, including, but not limited to, the chair of the governing
6 body overseeing the state agency, the agency secretary, the
7 Governor's office, or the appropriate constitutional officer.

8 (b) If the decision regarding residual risk or the need for
9 appropriate action in response to an audit finding or
10 recommendation that could have a significant impact on the
11 state's fiscal operations, the performance of a significant
12 government program, or the delivery of a significant government
13 service, or other similar significant or critical government
14 services, as determined by the chief internal auditor, is still not
15 resolved after making the disclosures required pursuant to
16 subdivision (a), the chief internal auditor shall report the matter
17 to the Joint Legislative Audit Committee and the State Auditor.
18 At the direction of the Joint Legislative Audit Committee, the
19 State Auditor shall investigate a disclosure made pursuant to
20 subdivision (b) and report the results of the investigation in
21 accordance with Chapter 6.5 (commencing with Section 8543) of
22 Division 1. The disclosure requirements of this subdivision shall
23 not apply to any chief internal auditor who reports and makes
24 disclosures to an audit committee, as described in subdivision (b)
25 of Section 13887.

26 (c) Any chief internal auditor who makes a disclosure pursuant
27 to this section shall receive all protection available under the
28 California Whistleblower Protection Act (Article 3 (commencing
29 with Section 8547) of Chapter 6.5 of Division 1).

30 13888. (a) If an internal auditor employed by a state agency
31 has a good faith belief that the agency management is interfering
32 with the internal auditor's or auditors' ability to comply with the
33 provisions of this part, that the internal auditor or auditors are
34 under pressure to modify or limit findings or recommendations,
35 or that senior management is not taking appropriate action in
36 response to an audit finding or recommendation, the internal
37 auditor may report the information supporting that good faith
38 belief to the State Auditor.

39 (b) The State Auditor may investigate any report made
40 pursuant to subdivision (a) and if the allegations are

1 substantiated, shall report his or her findings pursuant to Chapter
2 6.5 (commencing with Section 8545) of Division 1.

3 (c) Any internal auditor making a report pursuant to this
4 section shall receive all protection available under the California
5 Whistleblower Protection Act (Article 3 (commencing with
6 Section 8547) of Chapter 6.5 of Division 1).

7 13888.5. In order to determine that internal audit
8 organizations have the controls in place to ensure that they are
9 free to independently conduct audit work, and that state agencies
10 take appropriate action in response to the findings and
11 recommendations made by their internal auditors, the State
12 Auditor shall annually select not less than two state agencies and
13 conduct a performance audit of the internal audit organizations
14 within the selected state agencies for that fiscal year to determine
15 whether the audit organizations are meeting the requirements of
16 this chapter.

17 ~~SEC. 7. Section 11751.5 of the Insurance Code is amended to~~
18 ~~read:~~

19 ~~11751.5. The commissioner, after notice and hearing, may~~
20 ~~promulgate reasonable rules and statistical plans, which may be~~
21 ~~modified from time to time and which shall be used thereafter in~~
22 ~~the recording and reporting by insurers of their loss and expense~~
23 ~~experience in order that the experiences of all insurers may be~~
24 ~~made available in such form and detail as may be necessary to~~
25 ~~aid the commissioner in administering the provisions of Article 2~~
26 ~~(commencing with Section 11730). The commissioner shall~~
27 ~~designate a rating organization licensed under this article as his~~
28 ~~or her statistical agent to gather and compile those experience~~
29 ~~statistics and all licensed rating organizations shall report the~~
30 ~~experience of their members to the designated rating~~
31 ~~organization. The designated statistical agent is a publicly created~~
32 ~~entity for purposes of Chapter 6.5 (commencing with Section~~
33 ~~8543) of Division 1 of Title 2 of the Government Code. Subject~~
34 ~~to reasonable rules approved by the commissioner, the designated~~
35 ~~rating organization shall make the experience statistics, when~~
36 ~~compiled, available to all licensed rating organizations and may~~
37 ~~make a reasonable charge to other rating organizations for the~~
38 ~~expense incurred by it in combining, tabulating, and compiling~~
39 ~~the experience of all workers' compensation insurers.~~

1 *SEC. 6. Section 11752.5 of the Insurance Code is amended to*
2 *read:*

3 11752.5. (a) Subject to subdivision (b), a licensed rating
4 organization shall make available any policy information
5 contained in its records to the following:

6 (1) The Department of Industrial Relations.

7 (2) Any other governmental agency if the Insurance
8 Commissioner, after consultation with the licensed rating
9 organization, approves the release of the policy information
10 requested to the agency.

11 (b) The Department of Industrial Relations and any other
12 governmental agency shall specify to the licensed rating
13 organization, in writing, the information requested, that the
14 information requested is to be used to facilitate the agency's
15 performance of its constitutional or statutory duties, and that the
16 information received will not be released to others, except in the
17 discharge of a specific statutory or constitutional duty, or
18 published without the prior written consent of the licensed rating
19 organization. In addition, if the Insurance Commissioner's
20 approval is required for the release of the policy information
21 requested, a written copy of the approval shall be submitted to
22 the licensed rating organization.

23 (c) As used in this section, "policy information" means
24 information which is contained in a workers' compensation
25 policy, including, but not limited to, the identity and address of
26 the employer, the identity of the insurer, the policy number, and
27 the policy period.

28 (d) Information obtained by a governmental agency pursuant
29 to this section shall be confidential and not subject to public
30 disclosure under any other law of this state.

31 (e) No licensed rating organization or member thereof, or
32 member of a committee of a licensed rating organization when
33 acting in its capacity as a member of the committee, or officer or
34 employee of a licensed rating organization, when acting within
35 the scope of his or her employment, shall be liable to any person
36 for injury, personal or otherwise, or damages caused or alleged to
37 have been caused, either directly or indirectly, by the disclosure
38 of information to a governmental agency pursuant to this section,
39 or for the accuracy or completeness of the information so
40 disclosed.

1 (f) This section shall not be construed as implying the
2 existence of liability in circumstances not defined in this section,
3 nor as implying a legislative recognition that, except for
4 enactment of this section, a liability has existed or would exist in
5 the circumstances stated in this section.

6 (g) This section shall not be construed as limiting any
7 authority of a licensed rating organization to disclose information
8 contained in its records to others.

9 *(h) In conducting any audit pursuant to Chapter 6.5*
10 *(commencing with Section 8543) of Division 1 of Title 2 of the*
11 *Government Code, the Bureau of State Audits shall have access*
12 *and authority to examine records held by a licensed rating*
13 *organization to the same extent that any officer or employee of a*
14 *state agency, including, but not limited to, the Department of*
15 *Insurance and the Department of Industrial Relations, has access*
16 *and authority to examine those records. That access shall be*
17 *granted in accordance with Section 8545 of the Government*
18 *Code.*

19 ~~SEC. 8.~~

20 SEC. 7. Section 11873 of the Insurance Code is amended to
21 read:

22 11873. (a) Except as provided by subdivision (b), the fund
23 shall not be subject to the provisions of the Government Code
24 made applicable to state agencies generally or collectively, unless
25 the section specifically names the fund as an agency to which the
26 provision applies.

27 (b) The fund shall be subject to the provisions of Chapter 10.3
28 (commencing with Section 3512) of Division 4 of Title 1 of, and
29 Chapter 6.5 (commencing with Section 8543) of Division 1 of
30 Title 2 of, the Government Code, and Division 5 (commencing
31 with Section 18000) of Title 2 of the Government Code, with the
32 exception of all of the following provisions of that division:

33 (1) Article 1 (commencing with Section 19820) and Article 2
34 (commencing with Section 19823) of Chapter 2 of Part 2.6 of
35 Division 5.

36 (2) Sections 19849.2, 19849.3, 19849.4, and 19849.5.

37 (3) Chapter 4.5 (commencing with Section 19993.1) of Part
38 2.6 of Division 5.

39 (c) Notwithstanding any provision of the Government Code or
40 any other provision of law, the positions funded by the State

- 1 Compensation Insurance Fund are exempt from any hiring
- 2 freezes and staff cutbacks otherwise required by law. This
- 3 subdivision is declaratory of existing law.

O